IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 7073 (SS) OF 2001

Shiv Datt Upreti, aged about 51 years,
S/o Shri Bhawani Datt Upreti,
R/o Raj Bhawan Campus, Nainital. .....Petitioner.

Versus

1. State of Uttaranchal, through the Secretary, Public Works Department, Govt. of Uttaranchal, Secretariat, Dehradun.
2. Chief Engineer, Public Works Department, Dehradun, Uttaranchal.
3. Executive Engineer, Nirman Khand, Public Works Department, Nainital. .....Respondents.

Mr. Menka Tripathi Advocate for the petitioner.
Learned Standing Counsel for the respondents.

Dated: 06.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the opposite parties to regularize the services of the petitioner as a "Plumber" in the establishment of the opposite parties and to pay him arrears of salary for the post of 'Plumber' with effect from October, 1982. Further prayer has been made for a writ of mandamus commanding the opposite parties to pay the salary to the petitioner in regular scale of pay as admissible to a person working on regular basis on the post of 'Plumber' together with all other consequential benefits which are available to the employee, regularly, every month.

Briefly stated, the petitioner was appointed as Beldar on daily wage basis in the establishment of the opposite parties at Raj Bhawan, Nainital with effect from 1968 on a daily salary of Rs. 3.25/- per day. Subsequently, the petitioner was regularized on the post of 'Beldar' w.e.f. March, 1977. Thereafter, in the month of October, 1982, the post of 'Plumber' in Raj Bhawan, Nainital became vacant due to retirement of one Shri Ratan Singh Bisht and in place the petitioner was assigned the work of 'Plumber' w.e.f. October, 1982 and according to the petitioner, he is continuously working since then without any break.

The petitioner has submitted that 24 years have already passed working on the post of Plumber, but his service on the post of Plumber has not yet been regularized.

Learned counsel for the petitioner has submitted that it is well settled proposition of service jurisprudence that if an employee is working on a post since last 3-4 years either on daily wage basis or on adhoc basis or work charge basis, the same reveals that the post occupied by such employee is a permanent one and the work is of perennial nature and the incumbent of the said post is entitled to be regularized on that post.

Petitioner has submitted that he has filed a representation (Annexure No. 1) stating his grievance, but no action has been taken by the authorities.

The grievance of the petitioner is that he has worked continuously for more than 26 years on the post of work charge basis but his service has not yet been regularized.

A counter affidavit has been filed, where in paragraph 2 it has been stated that vide order dated 603/PF dasted 3/2/79 petitioner's service was regularized on the post of Beldar and it is wrong to say that the petitioner is entitled to be regularized

for the post of Plumber. In paragraph 6 it has been stated that the petitioner is not holding any diploma certificate of Plumber hence he cannot be appointed and regularized on the post of Plumber, however, petitioner is regularly working in the regular post of Beldar since March, 1977 for which he is getting salary for the post of Beldar.

However, liberty is given to the petitioner to file a fresh representation before the authority concerned within a period of two weeks from the date of presentation of the certified copy of the order. If such a representation is filed, respondents are directed to dispose of the same along with the old representation (Annexure No. 1 to the writ petition) dated 2.11.1985 within a period of one month thereafter. In the meantime the petitioner shall be paid minimum of the pay scale.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

06.03.2006
Rathour